

### **REMARKS**

Reconsideration of the above-identified application in view of the amendments above and the remarks following is respectfully requested.

Claims 1- 60 and 62 - 91 are in this Application. Claims 1 -60 and 62 - 91 have been rejected under 35 U.S.C. § 112. Claims 1 – 60 and 62 – 91 have been rejected under 35 U.S.C. § 103. Claims 61 have been canceled in a previous response. Claims 81 and 85 have been canceled herewith. Claims 1, 21, 51, 59, and 69 have been amended herewith.

### **Amendments To The Claims**

#### **35 U.S.C. § 112 Rejections**

The features of the 100GHz and 10GHz have been deleted from the claims.

#### **35 U.S.C. § 103 Rejections**

Claim 1 has been amended to define that the sensor is a non-irradiative sensor which is placed proximal to the tissue to be characterized in order to characterize the tissue without actually penetrating the tissue being characterized. This is of course irrespective of the endoscope having penetrated other tissue in order to get to the orifice in the first place.

In Iddan electromagnetic sensors are all irradiative: imagers, optical sensing, collect reflected light, spectrometer.

In King, the sensor is at the side of the probe or apparatus, not at the tip, and is specifically for penetrating the tissue – see King column 1 lines 65 – 66 where he discusses insertion into the dielectric material, also column 2 lines 41 and 42 where he discusses insertion into a penetrable dielectric material.

In an endoscopic system, where one does *not* penetrate the tissue when characterizing the tissue, one requires the sensor to be at the tip of the proboscis, so that it will be able to contact the lumen wall. That is, combining King with Iddan will provide a sensor that requires penetration on an endoscope that does not provide for penetration of this sensor. That is to say the combination will not provide an endoscope with a tissue characterization sensor.

There is no means provided in Iddan as to how to provide for a direct contact of the side portion of the sensor with the lumen wall, and such direct contact, not suggested in Iddan, is required for the operation of the sensor of King. See also Iddan C. 14 lines 49-54. The mere definition of Iddan feature 102 as a proboscis indicates that it is intended to contact the lumen wall by its tip (distal end) as opposed to holding a sensor in non-penetrative contact with the sensor wall.

As a further point, in King (from Fig. 1) the aspect ratio of the probe is  $\sim 1:15$ .

For use in an endoscope King's sensor must be flexible. Endoscope working channels are  $\sim 5$ mm in diameter. Thus, if King's sensor were to be used, the probe length would have to be  $\sim 5 \times 15 = 75$  mm, which is impractical and indeed impossible for any endoscopic instrument extending out of the working channel. It is not possible in practice to control a proboscis that extends out of the endoscope much more than the diameter of the endoscope itself (2 to 3 times the diameter of the working channel).

Thus, the skilled person attempting to combine Iddan and King would only achieve a very impractical holder for a needle that is intended to penetrate the tissue. He would be unable to achieve a practical device because he still does not know how to build a non-irradiative and non-penetrative sensor onto an endoscope.

Thus the combination would not provide an endoscope with an intracorporeal portion, configured for insertion into a body, and including:

a non-irradiative electromagnetic sensor for tissue characterization, *configured to be placed proximally to an edge of a tissue for characterization, said characterization being without penetration by said non-irradiative electromagnetic sensor of the tissue being characterized.*

This is because all that the combination is able to provide is a non-irradiative electromagnetic sensor which *does* penetrate the tissue. However such a sensor cannot be combined with an endoscope.

Furthermore it is noted that the sensor of King, irrespective of whether or not it is combined with Iddan, would not even be *suitable* to provide an electromagnetic sensor that can be placed proximally to the edge of the tissue *without penetrating*. This is because if King's sensor does not penetrate it does not sense the tissue and therefore is *not* a sensor that senses without penetrating.

Thus, even if the Examiner takes a broad reading of "configured for" as meaning "suitable for", the claim language is *still* not met by the prior art.

The same amendment has been made to each of the other independent claims.

In view of the above amendments and remarks it is respectfully submitted that claims 1 – 60, 61-80, 82-84, and 86-91 are now in condition for allowance. A prompt notice of allowance is respectfully and earnestly solicited.

Respectfully submitted,

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**Enclosures:**

- Petition for Extension (3 Months)